

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

MIGUEL MARTINEZ,

Plaintiff,

-VS-

Case No. CIV-21-33-F

UNITED STATES OF AMERICA,

Defendant.

## ORDER

Plaintiff Miguel Martinez, a federal prisoner appearing *pro se*, commenced this action pursuant to the Federal Tort Claims Act (FTCA).<sup>1</sup> Plaintiff asserts that based on prison officials' negligence and failure to follow protocol, several pieces of valuable personal property, totaling over \$4,800.00 in value, were stolen from his cell, after he was placed in the Special Housing Unit for protection. The matter was referred to United States Magistrate Judge Gary M. Purcell. In response to plaintiff's complaint, defendant United States of America filed a motion to dismiss, arguing lack of subject matter jurisdiction and failure to state a plausible claim. With respect to the former, defendant posited that the court lacks subject matter jurisdiction over plaintiff's claim because it falls within the specific exception to the FTCA's limited waiver of sovereign immunity for claims "arising in respect of . . . the detention of any goods, merchandise, or other property by . . . any other law enforcement officer[.]" 28 U.S.C. § 2680(c). Plaintiff responded to defendant's motion, opposing dismissal. Subsequently, Magistrate Judge Purcell issued a Report and


<sup>1</sup> At all times relevant to this action, plaintiff was confined at the Federal Correctional Institution in El Reno, Oklahoma.

Recommendation, recommending the court grant defendant's dismissal motion and dismiss plaintiff's FTCA claim for lack of subject matter jurisdiction. He also recommended the court decline to exercise supplemental jurisdiction over plaintiff's state law claim of conversion pursuant to 28 U.S.C. § 1367(c)(3).

Presently before the court is plaintiff's timely objection to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1), the court has conducted a *de novo* review of the matter. Having done so, the court concurs with the analysis of Magistrate Judge Purcell and finds it unnecessary to repeat that analysis here. The court concludes that plaintiff's claim falls within § 2860(c)'s exception to the FTCA's limited waiver of sovereign immunity. The court rejects plaintiff's arguments to the contrary. Therefore, the court accepts, adopts, and affirms the Report and Recommendation in its entirety.

Accordingly, the Report and Recommendation of United States Magistrate Judge Gary M. Purcell issued on October 15, 2021 (doc. no. 29) is **ACCEPTED**, **ADOPTED** and **AFFIRMED**. Defendant United States of America's Motion to Dismiss (doc. no. 24) is **GRANTED**. Plaintiff Miguel Martinez's claim under the Federal Tort Claims Act is **DISMISSED WITHOUT PREJUDICE** under Rule 12(b)(1), Fed. R. Civ. P., for lack of subject matter jurisdiction, and his state law claim of conversion is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1367(c)(3).

IT IS SO ORDERED this 23<sup>rd</sup> day of November, 2021.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE